IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

ST.Rev..No. 112 of 2005()

TA.700/2002 of KERALA AGRICULTURAL INCOME TAX AND SALES TAX APPELLATE TRIBUNAL, ADDL.BENCH,PALAKKAD
.....

REVISION PETITIONER/RESPONDENT/REVENUE

STATE OF KERALA, REP. BY JOINT COMMISSIONER (LAW), COMMERCIAL TAXES, ERNAKULAM.

BY SPECIAL GOVERNMENT PLEADER FOR TAXES SHRI V.V. ASOKAN.

RESPONDENT/APPELLANT/ASSESSEE:

M/S.SAVITHA BAR, IRINJALAKUDA.

BY ADV. SRI.T.MADHU

THIS SALES TAX REVISION HAVING COME UP FOR ADMISSIONY ON 14/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

.....

SALES TAX REVISION CASE No. 112 OF 2005

&

C.M. APPLICATION NO. 216 OF 2005

.....

Dated this the 14th June, 2007

O R D E R

H.L. Dattu, C.J.:

C.M. APPLICATION NO. 216 of 2005.

Delay in presenting this Sales Tax Revision Case is condoned, since in the Revision Case filed by the Revenue a substantial question of law is involved.

SALES TAX REVISION CASE No. 112 OF 2005

The Revenue, being aggrieved by the orders passed by the Kerala Agricultural Income Tax and Sales Tax Appellate Tribunal in T.A. No. 700 of 2002 dated 8th April, 2003, is before us in this Revision case.

2. The Revenue has raised two substantial questions of law for our consideration. They are as under:

> *"Questions of law to be decided by the Honourable High Court:*
>
> *1) Whether on the facts and in the circumstances of the case, the Tribunal is justified in deleting the assessment*

made under sec. 5A in respect of purchase turnover of chicken meat.

2) Whether on the facts and in the circumstances of the case, the Tribunal is justified in finding that sales turnover of soda and soft drinks at bar attached hotel attracts tax only @8% as per Entry 40 of the Ist Schedule. "

3. Though the matter is listed in the list for orders, by the consent of the counsel of the parties to the lis, the matter is taken up for final hearing, since the question of law framed by the Revenue is already decided by a Full Bench of this Court.

4. Shri V.V. Asokan, Special Government Pleader for Taxes , at the time of hearing would submit that he would not press for an answer to the first question of law raised in this Revision. Taking note of the submission of the learned counsel, the first question is rejected as not pressed.

5. In so far as the second question is concerned, the Tribunal had come to the conclusion that the sales turnover of soda and soft drinks in the bar attached hotels attracts tax only at the rate of 8% as per Entry 40 of the Ist Schedule. A similar issue had come up for consideration before a Full Bench of this Court in **Lazrus Alosius v. State of**

Kerala (**2005 (2) KLT 604**). In the said decision, after a detailed consideration of the issues involved, the Full Bench had come to the conclusion that the sales turnover of soda and soft drinks at the bar attached hotels attracts tax at the rate of 20% under Entry 87 of the Ist Schedule.

6. In view of the said decision of the Full Bench, the second question of law, raised by the Revenue requires to be answered in favour of the Revenue and against the assessee. It is now made clear that the sales turnover of soda and soft drinks in the bar attached hotels would attract tax at the rate of 20% as per the Entry 87 of the Ist Schedule.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

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